

Amendment
Serial No. 10/527,087
Attorney Docket No. 052171

REMARKS

Claims 1-13 are pending in the present application and are rejected. Claims 1-13 are herein amended.

Applicants' Response to Objections to the Specification

The Office Action objects to the abstract of the disclosure because it exceeds 150 words. In response, Applicants herein recommend amend the abstract. Deletion of the reference numerals brings the word count to less than 150. Favorable reconsideration is respectfully requested.

Information Disclosure Statement

The Office Action states that the IDS filed on March 10, 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not contain a concise statement of relevance of the foreign-language non-patent literatures. In response, Applicants respectfully submit that the English-language translation of the International Preliminary Examination Report (IPER) filed on July 7, 2005 is sufficient to satisfy the requirements for a concise statement of relevance. Thus, Applicants respectfully request that the Examiner return an initialed copy of the PTO-1449 form indicating that the references have been considered.

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Applicants' Response to Claim Objections

The Office Action objects to claims 1-7 and 9-13 because the claims utilize the word “part” instead of “means.” Applicants’ representative contacted the Examiner to clarify this point. Specifically, Applicants’ representative asked him whether he regarded the claims as being in “means-plus-function” format. The Examiner indicated that he did not regard the claims as being in “means-plus-function” format, but rather stated that other applicants usually used terms such as “a surface electromyogram measuring means.” The Examiner appeared to agree that usage of the term “means” was not *necessary*, since the application utilizes the word “part” throughout the specification. Applicants respectfully note that it is well established that an inventor may be their own lexicographer, and respectfully submit that the use of the “part” is acceptable.

Next, the Office Action indicates that claims 4 and 5 are objected to because they utilize the word “its” in the claims. The Office Action states that it is unclear what the word “its” refers to in these claims. In response, Applicants herein amend claims 4 and 5 to clarify that the word “its” refers to “the individual motor unit.”

Next, the Office Action indicates that claims 2, 4, 5, 8, 10 and 11 are objected to because they utilize the phrase “characterized in that” instead of “wherein.” Applicants herein amend the claims to recite “wherein.”

Next, the Office Action indicates that claims 3, 6, 7, 9, 12 and 13 are objected to because they utilize the phrases “characterized by” or “characterized by that” instead of the “further.” Applicants herein amend the claims to recite “further” where appropriate in the amended claims.

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Finally, the Office Action indicates that claim 13 should read “the image” instead of “an image.” Applicants herein amend claim 13 to recite “the image” in the attached proposed amended claims. Thus, Applicants respectfully submit that these amendments are sufficient to overcome all of the pending claim objections. Favorable reconsideration is respectfully requested.

Applicants’ Response to Claim Rejections under 35 U.S.C. §112

Claims 1-13 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Office Action states that the claims are generally narrative and indefinite, failing to conform to current U.S. practice. The Office Action states that they appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. However, the Office Action does not identify any specific phrases or terms which are regarded as being indefinite.

Accordingly, Applicants herein amend the claims in order to improve their clarity and definiteness. Favorable reconsideration is respectfully requested.

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Applicants' Response to Claim Rejections under 35 U.S.C. §103

Claims 1-3, 8 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over DiLorenzo (U.S. Patent Application Publication No. 2005/0240242) in view of Marossero et al. (U.S. Patent Application Publication No. 2005/0267376).

It is the position of the Office Action that DiLorenzo discloses the invention as claimed, with the exception of a display and the use of a blind deconvolution method for computing the firing pattern. The Office Action relies on Marossero to provide this teaching.

In response, Applicants respectfully submit that the priority date of the application predates both DiLorenzo and Marossero. In accordance with MPEP §1893.03(b), a national stage application of an international application has the filing date of the international application of which it is a national stage. The pending application is a §371 national stage application of PCT/JP02/09302, filed on September 11, 2002. Therefore, although the pending application has a national stage entry date of November 14, 2005, the application has a filing date of September 11, 2002.

DiLorenzo is a U.S. Patent Application Publication of an application filed on July 12, 2004. Accordingly, it has a §102(e) date of July 12, 2004. Since this date is after the filing date of the present application (September 11, 2002), DiLorenzo may not be properly relied upon as a reference under 35 U.S.C. §102(e).

Marossero is a U.S. Patent Application Publication of an application filed on May 28, 2004. Accordingly, it has a §102(e) date of May 28, 2004. Since this date is after the filing date

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of the present application (September 11, 2002), Marossero may not be properly relied upon as a reference under 35 U.S.C. §102(e).

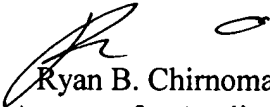
Accordingly, Applicants respectfully submit that both of the cited references are not proper references under 35 U.S.C. §102(e). Therefore, the rejection is improper and should be withdrawn. Favorable reconsideration is respectfully requested.

For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

Should the Examiner deem that any further action by applicants would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone applicants' undersigned attorney.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,
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